IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL No.574 of 2001
(Old No. 1991 of 1987)

Umesh Chandra S/o Sri Nitya Nand,
Assistant Teacher Darmiya, P.S. Patwari Baigniya,
District Almora

.....Appellant

Versus

The State

..... Respondent

Dated: July 13, 2007

Sri Rajendra Kotiyal, learned counsel for the appellant
Sri Harish Pujari, learned Addl. G.A. for the State/Respondent

HON. DHARAM VEER, J.

This appeal, preferred under Section 374(2) of Code of Criminal Procedure 1973 (*hereinafter to be referred as Cr.P.C.*), is directed against the judgment and order dated 04.07.1987 passed by Sessions Judge, Almora in Session Trial No. 28 of 1987, State Vs. Umesh Chandra, whereby the learned Sessions Judge has convicted the appellant u/s 332 of The Indian Penal Code, 1860 (*hereinafter to be referred as I.P.C.*) by imposing fine of Rs.300/- and in default, to undergo one month R.I. However, he was acquitted for the offence punishable u/s 307 I.P.C.

2. In brief, the prosecution story is that on 21.8.1986 at about 7:30 P.M., the complainant Sri Chandra Mohan Pant, Principal of the Government Higher Secondary School, Darmiya submitted a written report Ex.Ka-1 to the Patwari Baiganiya, District Almora with the allegations that when he was coming out of Class IX, after second round, appellant Umesh Chandra attacked him and kicked his stomach twice, hence there was severe pain in this stomach. In spite of his request, his colleagues did not take him to hospital. Only assistant teachers Harendra Singh and Chandra Kant Pande attempted to save him at the time of occurrence. Similarly, students of class IX also rescued him for about one hour and the appellant was so aggressive that he was telling the

students to leave him, so that he could kill him, but it was not done, hence he was saved. The appellant had enmity with the complainant for the reason that he was in unauthorized possession of government property and material and the complainant recovered the same from his possession after reporting the matter to the District Inspector of Schools. He had already informed the Tehsildar and DIOS on telephone about this occurrence. He was also given treatment by the doctor in the Government Hospital and he advised him complete rest for sometime. His red bad containing one key in a purse in cloth bag and an umbrella were left in possession of Bir Singh, Laboratory Attendant. Hence, it was necessary for him to go there so that laboratory may remain protected. Since he was suffering from severe pain, hence he was unable to give his statement at that time. It was also stated that this could be regarded as the saddest episode and it was prayed that some necessary action should be taken in public interest. On the basis of this report Ex.Ka-1, the Patwari, Puran Chandra prepared Chik Report and registered the case against the appellant, that Chik Report is Ex.Ka-3. The Principal Chandra Mohan Pant was medically examined by the Medial Officer PHC, Someshwar, Almora on 21.8.1986 at 3:00 P.M., the injury report is Ex.Ka-2. The Investigation Officer (Patwari) Puran Chandra has recorded the statements of the witnesses during the investigation and has also prepared a site plan i.e. Ex.Ka-4. After completing the investigation, the I.O. has submitted the charge sheet against the appellant i.e. Ex.Ka-5. (In rural Hill areas of State of Uttarakhand, the Patwaris are being vested with the police powers). The charge sheet was submitted against the appellant u/s 307/353/332/120-B of I.P.C. After submission of charge sheet, the learned CJM, Almora has committed the case to the court of Sessions by his order dated 3.4.1987. Learned Sessions Judge has framed the charge against the appellant on 5.5.1987 u/s 332 IPC and 307

I.P.C. The charge was read over and explained to the accused/appellant who pleaded not guilty and claimed to be tried.

3. To prove its case, the prosecution examined P.W.1 Sri Chandra Mohan Pant, injured and the victim, P.W.2 Chandra Kant Pandey, eyewitness, P.W.3 Harendra Singh Bisht, P.W.4 Dr. C.M.S. Dhami, P.W.5 Gopal Singh, P.W.6 Anand Singh and P.W.7 Bhupal Singh Bisht, Patwari who is the I.O. of the case.

4. After that the statement of the appellant was recorded u/s 313 of Cr.P.C. who has denied the allegations made against him and has stated that he has falsely been implicated due to enmity. However, he did not produce any oral or documentary evidence in his defence.

5. After considering all the evidence and hearing learned counsel for the parties, the learned Sessions Judge by his judgment and order dated 4.7.1987 has convicted and sentenced the appellant u/s 332 I.P.C. by imposing fine of Rs.300/- and in default, to undergo one month R.I. However, the appellant was acquitted for the offence punishable u/s 307 I.P.C. Against the said judgment and order dated 4.7.1987, the appellant has preferred the present appeal before this Court.

6. I have heard Sri Rajendra Kotiyal, learned counsel for the appellant and Sri Harish Pujari, learned Addl. G.A. for the State/Respondent No.1 and perused the entire record and the evidence available on records.

7. The prosecution in order to prove its case examined P.W.1 Sri Chandra Mohan Pant who has stated that since 18.8.1986, he was posted as Officiating Principal in the Government Higher Secondary School, Darmiyan and he was also the teacher of Maths and Science and the present appellant Umesh Chandra was also an Assistant Teacher in the same school. He was given the charge of the Principal by

the District Inspector of Schools, Almora under the order of higher authorities. He had to take the government property from the possession of the other employees of the college. He has taken the property as per the order of higher authorities from the other employees of the college. The higher authorities have passed an order on 17.7.1986 for the refund of said property within 3 days but the employees had not returned the same. The college property was in the possession of 18 employees including the appellant Umesh Chandra. He has asked all the employees to return the property of the college but they did not do so. After that, when the District Inspector of Schools had come to the college on 26.7.1986, then these employees had returned the college property, for this reason these people were annoyed with him. Most of the teachers and employees were belong to the local area. The said incident took place on 21.8.1986 about 11:25 A.M. He has come in the college ground after teaching Maths in Class IX. He was teaching the Maths period, then an employee namely Shiv Bharti had come to him and had submitted the application of Umesh Chandra. Then he had endorsed his note on that application and returned the same. When he came on the ground, then the appellant Umesh Chandra had come in annoyed condition and then he asked him to write on his application according to his will. After that he has stated that he had written the note on the application whatever he thought proper and had refused to right a note as per the wish of the appellant and after that appellant had annoyed. Then the appellant Umesh caught him by collar and he was given two kicks in his stomach. During this period, teachers Harendra Singh Bisht and Chandra Kant Pandey and also the students of class IX reached there. Then the students had taken him in his classroom after closing the door and the students stood over there. Then the appellant again came there on the door and he had tried to break the door in order

to enter into the room and he was asking the students to leave him in order to kill him. But the students have not obeyed the order of the appellant. He has also stated that if the students would have opened the door, then the appellant could have killed him at that time. He felt pain in the stomach due to the kicks of the appellant. Then at 2:00 P.M., he has come out from the room and went to the hospital and there the doctor medically examined him and the medical report was prepared. Before reaching hospital, he has informed Tehsildar and the District Inspector of Schools, Almora by telephone about the incident. From the hospital, he has gone his house and about 7:30 P.M. on the same day, the Patwari has come to his house and then he has given the written FIR of the same incident to the Patwari. He has proved that FIR i.e. Ex.Ka-1 and Patwari has also enquired about the said incident from him at that time. After some days, he was transferred to some another college and the Umesh Chandra was suspended. He has further stated that on the date of incident, appellant could have killed him. This witness was cross-examined at length by the defence counsel but noting has come out which may create any doubt in his evidence. The evidence of this witness is trustworthy, believable and reliable.

8. P.W.2 is Chandra Kant who has stated that in August, 1986, he was the Assistant Teacher in the Government Higher Secondary School, Darmiya and Chandra Mohan Pant was also a teacher and the officiating principal and the appellant Umesh Chandra was also there as a Teacher. He has stated that on the date of incident, the time was about 11 o'clock when he heard the noise. Then he saw that some hot talks were going on between the officiating principal Chandra Mohan Pant and the appellant. Then both of them started to quarrel each other and then he and Harendra Singh Bisht had intervened in between their quarrel. Harendra Singh Bisht has taken the Chandra Mohan Pant at

one side and he had taken the appellant towards the side of office. Then he has gone from the place of incident and has started his work. This witness has supported the incident up to the extent that he had seen the incident on the same day and time as narrated by P.W.1 Chandra Mohan Pant and he has taken the appellant from the place of occurrence towards the office and the Harendra Singh Bisht had taken Chandra Mohan Pant from the side of the office.

9. P.W.3 Harendra Singh Bisht has not supported the prosecution case and was declared hostile.

10. P.W.4 P.W.3 Harendra Singh Bisht has not supported the prosecution case and was also declared hostile.

11. P.W.4 Dr.C.M.S. Dhami, Medical Officer, PHC, Someshwar, District Almora who has stated that on 21.8.1986, he was posted as Medical Officer in Someshwar Hospital. He has examined the injuries on the body of Chandra Mohan Pant who was complaining pain in his stomach. He has also identified the victim Chandra Mohan Pant in the court and stated that he has examined the same person on 21.11.1986. He has found the following injuries on his body:-

1. *Tenderness all over abdomen present*
2. *Liniar sear over mid of right eye brow 2 cm in size*
3. *Small sear over fore head on left side. 3 cm above from left eye brow*

The doctor has proved the injury report Ex.Ka-2. The report was prepared at the time of his medical examination. He has further stated that the injuries could be caused on same day on 21.8.1986 at 11:30 A.M. and injuries are also possible by kicks.

12. P.W.5 is Gopal Singh who has also not supported the prosecution case and was declared hostile.

13. P.W.6 Anand Singh has also not supported the prosecution case and was declared hostile.

14. P.W.7 is the Bhopal Singh, Patwari, who has stated that Puran Chandra, Patwari was known to him and on those

days, he was not feeling well. He has also stated that he has seen Puran Chandra, Patwari while reading and writing. The Chik Report, site plan and the charge sheet of the present case was in the handwriting of Patwari Puran Chandra and for that he has identified his signatures on the above said documents and these documents are Ex.Ka.3, Ex.Ka.4 and Ex.Ka.5. Arrest memo is also in his hand writing, i.e. Ex.Ka-6 and case diary was also in his own handwriting. He has further stated that he has recorded the statement of Harendra Singh Bisht, Gopal Singh and Anand Singh during the investigation and he has filed the statements recorded by him u/s 161 of Cr.P.C. of these witnesses, copy of these he has filed that are Ex.Ka.7 Ex.Ka.8 and Ex.Ka.9.

15. After that, the statement of the appellant was recorded u/s 313 of Cr.P.C. who has denied the allegations made against him and stated that he had been falsely implicated.

16. From the evidence discussed above, the statement of P.W.1 Chandra Mohan Pant is supported by the statement of P.W.2 Chandra Kant Pandey and P.W.4 Dr.C.M.S. Dhami and his injury report Ex.Ka-2. P.W.1 Chandra Mohan Pant has stated that on 21.8.1986 at about 11:25 A.M., when he came in the ground after teaching Maths to the students, then the appellant Umesh Chandra had come in annoyed condition and then he has asked him to write on his application according to his will. After that he has stated that he had written the note on the application whatever he thought proper and had refused to right a note as per the wish of the appellant and after that appellant had annoyed. Then he was caught by the appellant Umesh by collar and he was given two kicks in his stomach. During this period, teachers Harendra Singh Bisht, Chandra Kant Pandey and students of class IX reached there. Then the students had taken him in his classroom after closing the door and the students stood over there. Then the

appellant again came on the door and had tried to break the door in order to enter into the room and was asking the students to leave him in order to kill him. After that at 2:00 P.M., he came out from the room and went to the hospital and there the doctor medically examined him at 3:00 P.M. and the injury report Ex.Ka.2 was prepared. P.W.4 Dr.C.M.S. Dhami proved this injury report Ex.Ka.2. The statement of P.W.1 Chandra Mohan Pant is also corroborated by the statement of P.W.2 Chandra Kant. Thus, the oral evidence of P.W.1, injured victim is corroborated by the evidence of P.W.2 Chanda Kant and P.W.4 Dr.C.M.S. Dhami and injury report Ex.Ka-2 and it is proved beyond reasonable doubt by the prosecution that on 21.8.1986, when Chandra Mohan Pant, Officiating Principal in Government Higher Secondary School, Darmiyan was discharging his official duty as a teacher and the officiating principal, then the appellant Umesh Chandra had beaten him by kicks and caused injuries in his stomach. Thus, in this way the appellant has committed an offence punishable u/s 332 of I.P.C. as held by the trial court.

17. Learned counsel for the appellant has submitted that as far as the conviction part is concerned, he does not want to challenge the same and he is also satisfied with the judgment of the trial court for the conviction of the appellant u/s 332 of I.P.C. He has confined his prayer only to the extent of sentence part. He has submitted that the sentence awarded to the appellant i.e. fine of Rs.300/- may be set aside and the benefit of first offender under the Probation of Offenders Act, 1958 may be given to the appellant due to the reason that the appellant is an Assistant Teacher in the Government College and if he will be given punishment by way of fine, then his services will be adversely affected and he will not get the future benefits of his service. Sri Harish Pujari, learned Addl. G.A. for the State also conceded to this point and has submitted that for this sentence, the State has no objection.

Learned counsel for the appellant in support of his argument cited a judgment of Hon'ble Apex Court in the case of Commandant, 20th Battalion, ITB Police v. Sanjay Binjola reported in 2001 S.C.C. (Cri.) 897. He relied on para 10 which reads as under:-

> *10. While allowing the appeal and setting aside the impugned order, we direct that despite confirmation of conviction by the leaned Sessions Judge, the respondent be given the benefit of the Probation of Offenders Act. Instead of sentencing him to any punishment, we direct the respondent to be released on his entering a bond with two sureties, to appear and receive the sentence when called upon during the period of two years and in the meantime to keep the peace and be of good behaviour. The respondent shall furnish the bond and the sureties before the trial Magistrate within a period of two months from today. We further hold the respondent entitled to the benefit of Section 12 of the Probation of Offenders Act.*

18. After considering all the facts and circumstances of the case and the nature of the injuries and the crime committed by the appellant in a manner, I think it proper and just to give the benefit to the appellant under the Probation of Offenders Act, 1958.

19. For the reasons recorded above and in view of judgment of Hon'ble Apex Court in case of Commandant, 20th Batallion, ITBP Police (**Supra**), the appeal is partly allowed. The sentence awarded to the appellant for Rs.300/- is hereby set aside. The appellant will be released on his entering a bond with two sureties, to appear and receive the sentence when called upon during the period of one year and in the meantime to keep the peace and be of good behaviour. The appellant shall furnish the bond and the sureties before Sessions Judge, Almora within a period of two months from today.

(Dharam Veer, J.)

Rajeev Dang